

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

Settlement Date: 5/9/11
Time: 9:30 a.m.

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In the Matter of

Chapter 7
Case No. 11-70412-dte

SYNERGY BRANDS, INC.,

NOTICE OF SETTLEMENT

Debtor.

-----X
KENNETH KIRSCHENBAUM, as Chapter 7
Trustee for the Estate of Synergy Brands, Inc.,

Plaintiff,

Adv. Pro. No. 11-8908-dte

-against-

THOMAS BARBELLA, MAIR FAIBISH,
MITCHELL GERSTEIN, DAVID SHARIN,
THE CHARLES SCHWAB CORPORATION,
JP MORGAN CHASE & CO., JANNEY
MONTGOMERY SCOTT LLC and VANGUARD
FIDUCIARY TRUST COMPANY,

Defendants.

-----X
SIRS:

PLEASE TAKE NOTICE that an Order, of which the within is a true copy, will be presented for settlement to the Honorable Dorothy Eisenberg, one of the judges of the within named Court, at the United States Bankruptcy Courthouse, Long Island Federal Courthouse, 290 Federal Plaza, Room 760, Central Islip, New York on May 9, 2011 at 9:30 a.m.

Dated: Garden City, New York
April 29, 2011

Yours, etc.
KIRSCHENBAUM & KIRSCHENBAUM, P.C.
Attorneys for the Trustee

By: Steven B. Sheinwald

Steven B. Sheinwald
200 Garden City Plaza, 5th Floor
Garden City, New York 11530
(516) 747-6700

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-against-

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FIDUCIARY TRUST COMPANY,

Defendants.
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Chapter 7

Case No. 11-70412-dte

ORDER GRANTING
PRELIMINARY INJUNCTION

Adv. Pro. No. 11-8908-dte

Kenneth Kirschenbaum, as Chapter 7 Trustee (the "Trustee") for the Estate of Synergy Brands, Inc. (The "Debtor"), having filed an application (the "Application") for a preliminary injunction, and the Trustee having further requested that the Court schedule a hearing on the Application on an expedited basis, and the Court having reviewed the Trustee's affidavit in support of the Application, the supporting exhibits, and the Trustee's underlying complaint, and the Court having entered an Order scheduling a hearing on an expedited basis to consider the Trustee's Application, and the matter having duly come on to be heard before the Honorable Dorothy Eisenberg, United States Bankruptcy Judge, on April 28, 2011, and Steven B Sheinwald, Esq. having appeared on behalf of the Trustee in support of the Application, and Mark Friedman, Esq. having appeared on behalf of defendant David Sharin, and Brian Schechter, Esq. having

appeared on behalf of defendant Mair Faibish, and Patricia Casperson, Esq. having appeared on behalf of defendant Janney Montgomery Scott, LLC, and the Trustee's counsel having represented to the Court that all defendants were served with the Order scheduling a hearing on the Trustee's Application on shortened notice together with all documents upon which the Order scheduling the hearing was issued, and the Court having considered the Trustee's Application together with its supporting documents, the underlying complaint, the opposition to the Trustee's Application filed by The Law Offices of Mark J. Friedman, P.C. on behalf of defendant David Sharin, and the affirmation of Heath Berger, Esq., filed on behalf of defendant Mair Faibish, in opposition to the Trustee's Application, and all parties appearing before the Court having been given an opportunity to be heard with respect to the Trustee's Application, and the Court having found a basis for granting the relief requested, it is hereby

ORDERED, that the Trustee's Application for a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure, made applicable through Rule 7065 of the Federal Rules of Bankruptcy Procedure, is granted for a period of 30 days, and the preliminary injunction (the "Injunction") shall be effective for the period commencing April 28, 2011 through and including May 28, 2011 (the "Effective Period") without prejudice to the rights of any party to seek a modification of the terms of the Injunction; and it is further

ORDERED, that, during the Effective Period, Defendant Thomas Barbella ("Barbella") is prohibited from spending, distributing, disposing, sequestering, or in any other way transferring those retirement funds in the sum of \$99,420.35 that were originally rolled over from the Debtor's employer sponsored retirement plan entitled the Synergy Brands Inc. 401(k) Profit Sharing Plan (the "Plan") to the Defendant Charles Schwab; and it is further

ORDERED, that, during the Effective Period, Defendant Charles Schwab ("Scwhab") is

prohibited from transferring, distributing, or otherwise disposing of Barbella's retirement funds in the sum of \$99,420.35 rolled over from the Plan and/or Barbella to Schwab; and it is further

ORDERED, that, during the Effective Period, Defendant Mair Faibish ("Faibish") is prohibited from spending, distributing, disposing, sequestering, or in any other way transferring those retirement funds in the sum of \$82,080.66 that were originally rolled over from the Plan to the Defendant Janney Montgomery Scott LLC; and it is further

ORDERED, that, during the Effective Period, Defendant Janney Montgomery Scott LLC ("Janney") is prohibited from transferring, distributing, or otherwise disposing of Faibish's retirement funds in the sum of \$82,080.66 rolled over from the Plan and/or Faibish to Janney; and it is further

ORDERED, that, during the Effective Period, Defendant Mitchell Gerstein ("Gerstein") is prohibited from spending, distributing, disposing, sequestering, or in any other way transferring those retirement funds in the sum of \$86,460.91 that were originally rolled over from the Plan to the Defendant JPMorgan Chase & Co.; and it is further

ORDERED, that, during the Effective Period, Defendant JPMorgan Chase & Co. ("JP Morgan") is prohibited from transferring, distributing, or otherwise disposing of Gerstein's retirement funds in the sum of \$86,460.91 rolled over from the Plan and/or Gerstein to JP Morgan; and it is further

ORDERED, that, during the Effective Period, Defendant David Sharin ("Sharin") is prohibited from spending, distributing, disposing, sequestering, or in any other way transferring those retirement funds in the sum of \$128,415.44 that were originally rolled over from the Plan to the Defendant Vanguard Fiduciary Trust Company; and it is further

ORDERED, that, during the Effective Period, Defendant Vanguard Fiduciary Trust

Company ("Vanguard") is prohibited from transferring, distributing, or otherwise disposing of Sharin's retirement funds in the sum of \$128,415.44 rolled over from the Plan and/or Sharin to Vanguard; and it is further

ORDERED, that, unless otherwise extended by the Court, this Order shall expire at 12:00 a.m. on the 29th day of April, 2011.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In the Matter of

SYNERGY BRANDS, INC.,

Debtor.

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KENNETH KIRSCHENBAUM, as Chapter 7
Trustee for the Estate of Synergy Brands, Inc.,

Plaintiff,

-against-

THOMAS BARBELLA, MAIR FAIBISH,
MITCHELL GERSTEIN, DAVID SHARIN,
THE CHARLES SCHWAB CORPORATION,
JP MORGAN CHASE & CO., JANNEY
MONTGOMERY SCOTT LLC and VANGUARD
FIDUCIARY TRUST COMPANY,

Defendants.

-----X
STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

EILEEN WAGDA, being duly sworn, deposes and says:

I am not a party to the action, am over 18 years of age and reside at Levittown, New York.

On April 29, 2011, I served a true copy of the annexed **PROPOSED ORDER GRANTING PRELIMINARY INJUNCTION with NOTICE OF SETTLEMENT** in the following manner:

BY: placing the same in a sealed envelope in an official depository of the United States Postal Service within the State of New York, addressed to the last known address of the addressee(s) listed below:

Thomas Barbella
20 Cherry Lane
Syosset, New York 11791

Chapter 7

Case No. 11-70412-dte

AFFIDAVIT OF SERVICE

Adv. Pro. No. 11-8908-dte

Steinberg, Fineo, Berger & Fischhoff, P.C.
Attorneys for Mair Faibish
40 Crossways Park Drive
Woodbury, NY 11797

Mitchell Gerstein
114 Hidden Ponds Circle
Smithtown, New York 11787

The Law Offices of Mark J. Friedman, P.C.
Counsel to David Sharin
66 Split Rock Road
Syosset, NY 11791

Attention: Brandon Hemley, Esq.
The Charles Schwab Corporation
211 Main Street
San Francisco, CA 94105

JP Morgan Chase & Co.
National Subpoena Processing
7610 W. Washington Street
IN1-4054
Indianapolis, IN 46231-1335
Attention: Dennis Howard, Unit Lead

Attention: Patricia Casperson, Esq.
Janney Montgomery Scott, LLC
1801 Market Street - 8th Floor
Philadelphia, PA 19103

Vanguard Fiduciary Trust Company
400 Devon Park Drive
Wayne, PA 19087-1815
Attention: Heidi Stam, Esq. - General Counsel
Legal Dept. - V-26

Pryor & Mandelup
675 Old Country Road
Westbury, NY 11590
Attention: J. Logan Rappaport, Esq.

United States Trustee
Long Island Federal Courthouse
560 Federal Plaza
Central Islip, New York 11722


EILEEN WAGDA

Sworn to before me this
29th day of April, 2011


NOTARY PUBLIC

TAL HIRSHBERG
NOTARY PUBLIC, STATE OF NEW YORK
NO. 02HI6212693
QUALIFIED IN NASSAU COUNTY
COMMISSION EXPIRES 10/19/2013